

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 3110.22US02

Hochschuler et al.

Confirmation No.: 7691

Application No.: 10/804,761

Examiner: Michael J. Araj

Filed: March 19, 2004

Group Art Unit: 3775

For: METHOD AND APPARATUS FOR TREATING A VERTEBRAL BODY

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 CFR § 1.56, and in addition to information disclosed in any prior Information Disclosure Statements filed, the attention of the Patent and Trademark Office is hereby directed to the references listed on the attached Form PTO-1449. It is respectfully requested that the information be expressly considered during the prosecution of the above-referenced application, and be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

Out of an abundance of caution in view of the recent case law decisions regarding the duty of candor under 37 CFR 1.56, and as part of a transfer of responsibility for the prosecution of this file to a new firm, the current attorneys for the applicants have attempted to review all of the potentially related files to identify and bring to the attention of the examiner any additional prior art references which have been cited in those files. Although the applicants' attorneys did not specifically prosecute many of these related files and are unaware of any noncumulative prior art references within the listing of these additional prior art references, the applicants' attorney did prosecute the interference (105,252) which has been previously made of record in this case.

In addition, the applicant's attorney wishes to specifically point out to the Examiner that the ownership of the instant case was transferred from the losing party to the winning party as part of the settlement in this interference, and that the winning party in the interference has continued the prosecution of this case to pursue subject matter which is believed to be patently distinct from the subject matter of the winning party's patent application that was the subject of the interference, and is now issued as U.S Patent No. 7,226,481. In view of the procedural similarity of this case to the facts of Precision Instrument Mfg. Co. Automotive Maintenance Machinery Co., 324 U.S. 806 (1945) (prosecution by the winning party of a patent application originally filed by the losing party that was assigned to the winning party as part of a settlement of an interference), the applicants attorneys hereby advises the examiner that, to the best of his personal knowledge and, to his knowledge, to the best of the knowledge of Spineology, Inc., as the winning party and current assignee of this application, but without any investigation of the knowledge of the losing party or the inventors, the applicant's attorney and the assignee are unaware of any facts or allegations raised or considered during the interference that the named inventors of the present case had sought to deceive or otherwise mislead the Patent Office with respect to their inventorship of the subject matter of the claims currently presented in the present case. While the winning party did present an allegation of possible derivation of the subject matter of the claims that were the subject of the interference, the winning party did not have support for, and did not copy or present, the subject matter of the claims as presented in the present case as part of the winning party's case in the interference. Accordingly, the Examiner is respectfully requested to review the senior patent in the interference, U.S Patent No. 7,226,481, which is prior art to the present case, as well as the entire interference file history to confirm that the claims in the present case are patentable over the claims of the senior patent in the interference and that there are no facts or circumstances presented in the interference which would

give rise to a concern by the Examiner regarding the declaration and claim of inventorship of the subject matter of the claims currently presented in the present case.

The listing of a reference herein is not an admission that the reference is prior art or is material to patentability. 37 CFR § 1.97(h). Applicant reserves the right to establish the patentability of any claimed invention over any of the information provided herewith, and/or prove that this information may not be prior art, and/or prove that this information may not be enabling for any aspect of the information provided herewith.

This Information Disclosure Statement is being filed before the mailing date of a first Office Action and in connection with the filing of a Request for Continued Examination under 37 CFR § 1.114. No certification or fee is required. 37 CFR § 1.97(b)(4).

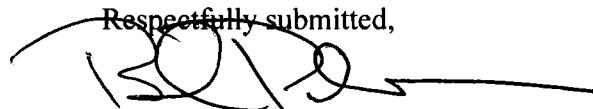
The Examiner's attention is directed to the applications or patents, if any, to which priority is claimed, as well as to any continuing applications which claim priority to the above-referenced application, and to applications, if any, that may be related by virtue of similar claimed subject matter as the above-referenced application (collectively, the "Related Case(s)"). The Related Case(s), or documents associated with the Related Case(s), are identified on the attached form PTO-1449 by serial number, publication number and/or patent number, along with a copy of the current prosecution history, downloaded from PAIR where available. The current prosecution history for the Related Case(s) is submitted as an NPL document for the convenience of the Examiner.

The prosecution history for any and all of these Related Case(s) may include information material to patentability of the above-referenced application including Office Actions, Responses, Office Communications or Notices of Allowance, all of which are readily accessible to the Examiner via PAIR/PALM. To promote consistency and full disclosure during the prosecution of the above-referenced application together with the prosecution of any of the Related Case(s) and to assist the

Application No. 10/804,761

Examiner in complying with the obligations of MPEP 2001.06(b), the Examiner is respectfully requested to review the prosecution history of each of the Related Case(s). This request for review should be considered ongoing throughout the prosecution of the above-referenced application with an updated review via PAIR/PALM of the prosecution histories of any Related Case(s) being made prior to issuance of any Notice of Allowance for the above-referenced application.

The identification of any of the Related Case(s) for purposes of this Information Disclosure Statement should not be construed as a waiver of secrecy, if applicable, as to such applications now or upon issuance of the above-referenced application as a patent.

Respectfully submitted,

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Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.